

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ petition no.5418/2001 (M/S)

T.H.D.C., Tehri Garhwal, ... Petitioner.

Versus

P.O. Labour Court and another Respondents.

Date of decision: 3, November 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the
reporters of reporting? (yes)

- Whether the reporters be allowed to see the
judgment? (yes)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 5418 of 2001 (M/S)

Tehri Hydro Development Corporation Limited
Tehri,
Tehri Garhwal, through
General Manager, THDC,
Tehri Garhwal Petitioner

Versus

1. Presiding Officer Labour Court
Dehradun.
2. Tehri Hydro Development Corporation
Employees Union, Tehri
and others Respondents

Mr. U.K. Uniyal, learned senior Counsel assisted by Sri S. Saharia
Advocate for the petitioner.

Mr. M.C. Pant, learned Counsel for respondents no. 2 to 167.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought direction in the nature of certiorari for quashing Order/Award dated 19.08.2001 passed by Presiding officer, Labour Court, Dehradun.

2) Brief facts of the case, as narrated in the writ petition, are that Tehri Dam is being constructed over the confluence of the rivers Bhagirathi and Bhilangana in the District of Tehri for the purposes of generation of electricity and discharge of water for irrigation and other purposes. The said Dam is a joint undertaking of Union of India and the State to the extent of 75% and 25% respectively. Initially Irrigation Department of State of U.P. started the entire project in early seventies. Later, considering the gigantic power complex, it was entrusted to

Tehri Hydro Development Corporation Ltd (hereinafter referred to as the THDC). The THDC is a Government company incorporated in July 1988 under Companies Act, 1956. The construction work of the project was transferred from Irrigation Department to State of U.P. to THDC by Government order dated 29.05.1989 (copy Annexure-2). There after Government order dated 16.06.1989 (copy Annexure-3 to the writ petition) was issued by the State of U.P., whereby a provision was made to transfer all the class III and class IV employees working in Tehri Dam project to THDC . The said order dated 16.06.1989 stood amended vide another Government order dated 10.07.1989 (copy annexure-4 to the writ petition) where by it was provided that all regular class III and class IV employees of the Tehri Project would be treated on deputation with deputation allowance for one year under the administrative control of THDC w.e.f. 10.07.89. It was further provided in said Government order that the employees who are unwilling to go on deputation may give their options latest by 31st July, 1989. It was also provided in the above mentioned letter issued Government order that work-charged/muster roll employees will continue to serve as provided in the earlier Government order dated 16.06.1989. Subsequently in a high powered meeting held on 21.08.1989 (copy of minutes Annexure-5 to the writ petition) between Secretary, Power, Government of India and Chief Secretary of State of U.P., it was decided that Irrigation Department of Government of U.P. should transfer service of all 1248 employees. As to the work-charged/muster roll employees, it was resolved that THDC would make selection of the work-charged staff on experience and qualification of the persons and in view of the requirement of the job with an interim arrangement that work-charged employees would till then continue in THDC and shall get emoluments as admissible to them earlier from Irrigation

Department of State of U.P. The THDC circulated its revised pay scales to the employees so that they may give their options for continuance with its. For work-charged/muster roll employees, the THDC gave a notice dated 23.03.1990 if they were willing to join the Corporation. In pursuance thereof 294 work-charged employees opted to join THDC w.e.f. 01.04.1990 and were absorbed as regular employees of THDC according to their qualifications and experience and allowed pay scales admissible in THDC. Again after consultation with the Irrigation Department, another opportunity was given by the THDC to the work-charged/muster roll employees for their options giving them another opportunity to join the Corporation. This time 258 other work-charged/muster roll employees gave their options and jointed the service of the Corporation on 01.07.1990. The remaining did not exercise their option presumably hoping to be absorbed in the Irrigation Department of Government of U.P. Meanwhile, in the year 1989 the Apex Court passed following interim order in a matter before it:-

"In the meantime, if any of the petitioners join the services with the Corporation, they may be paid the salary for the period during which they work with the Corporation. This will however, be subject to final orders, which may be passed in the appeal."

The petitioner has alleged that pursuant to said order, THDC gave yet another opportunity to the remaining work-charged/muster roll employees of Irrigation Department of U.P., vide letter dated 14.03.1991 but to no avail. Subsequently, a union named – 'THDC Ltd. Sinchai Sangathan' submitted a memorandum of demand on 04.03.1995, inter-alia raising the demand of absorption of work-charged/muster roll employees. On the said memorandum of demand made in March, 1995, THDC agreed for absorption of work-charged/muster roll

employees of Irrigation Department of U.P by 10.04.1995 on the lines of the offer given earlier to the second batch in July, 1990. A copy of minutes of said meeting are enclosed as Annexure-7 to the writ petition. Accordingly, THDC made an offer through its letter dated 07.08.1995(copy Annexure-8 to the writ petition) in this regard, in pursuance where of 281 work-charged/muster roll employees, on their option were issued appointment letters on 16.10.1995 (copy Annexure-9 to the writ petition). They joined their duties with THDC. As per the agreement reached between THDC and Union of employees as above, a notional seniority was agreed to be given to these employees w.e.f. 10.07.1990 without financial benefits up to 01.07.1994. The present respondents are 165 out of those 281 employees . It is alleged in the writ petition that these employees have already accepted the offer of the THDC on 07.08.1995 before joining the Corporation. On 01.08.2000, another union, namely 'THDC Employees Union, Tehri' filed an application (copy Annexure-10 to the writ petition) representing 165 workers (respondent No. 3 to 167) under section 33-C (2) of Industrial Disputes Act 1947, claiming the payment of arrears of difference in salary for the period 01.07.1990 to 30.06.1994. The THDC filed its written statement (copy Annexure 11 to writ petition) before the Labour Court, Dehradun. The Labour Court (Respondent No. 1) by its order dated 19.08.2001 (copy Annexure-1 to the writ petition) allowed the application of the workers Union directing THDC to make the payment of arrears of difference in salary for aforesaid period. Aggrieved by the same, the THDC has filed this writ petition alleging the order/award of the Labour Court as illegal and arbitrary. It is also alleged in the writ petition that two work-charged/muster roll employees of Irrigation Department who were similarly situated, had earlier moved similar application under section 33-C (2) of Industrial Disputes

Act, 1947, which was dismissed by the same Labour Court on 31.05.2001 (copy annexure-13 to the writ petition). The petitioners have alleged that the respondents No. 3 to 167 are not entitled to the difference in salary as directed by the Labour Court.

3) On behalf of the THDC Employees Union (respondent No. 2) a counter affidavit has been filed and the averments of the writ petition as mentioned in Para-1 to 8 of the writ petition are not denied. It is stated in the counter affidavit that vide Government order dated 16.06.89, service of the work-charged employees (including respondents No. 3 to 167) stood transferred to the petitioner company. As such the question of giving option on the part of the respondents in the year 1989-90 does not arise. It is further stated in the counter affidavit that since the services of the contesting respondents stood transferred, they are entitled to the difference in salary w.e.f. 1st July, 1990. It is also stated that an appointment letters dated 07.08.1995 issued to the workmen and acceptance thereof has been obtained by the petitioner only to defeat the respondents claim for difference in salary. Defending the Labour Court Order/Award, it has been stated that the same is in accordance with law without any infirmity.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the impugned order/award dated 19th August, 2001 passed in Misc. case No. 167 is illegal and liable to be quashed.

6) Admittedly, respondent No. 3 to 167 were work-charged/muster roll employees of Irrigation Department of Government of U.P. before transfer of their services with the

THDC . It is also not disputed that now w.e.f. 01.07.1994 they are absorbed in THDC and getting the pay scales admissible in said corporation. Dispute relates to the payment of difference of salary for the period 01.07.1990 to 30.06.1994. I have already mentioned above that contents of Para 1 to 8 to the writ petition are not denied in the counter affidavit of respondent No. 2 stating that these are matters of record. In para 4 of the writ petition it is stated that in early seventies Irrigation Department of State of U.P. started working on Tehri Dam Project. Later the same was entrusted to T.H.D.C. which is a Government company incorporated under the Companies Act, 1956. It is also stated in para 5 of the writ petition that by order dated 16.06.1989 (copy Annexure-3 to the writ petition) services of work-charged employees were treated to have been transferred to T.H.D.C. It is pertinent to mention here that T.H.D.C. is a Corporate body and the State of U.P. cannot unilaterally transfer its employees to the said Corporation. Accordingly, in pursuance of the decision dated 21.08.1989 (copy Annexure-5 to the writ petition), taken by the Secretary, Power, Government of India and Chief Secretary, Government of U.P., the T.H.D.C. invited options from the work-charged / Muster Roll employees of the Irrigation Department for their absorption in the Corporation. In response to the notice of the Corporation dated 23.03.1990 only 294 workers opted and jointed the THDC on 1st April, 1990. It appears from the record that fresh opportunity was given to the remaining work-charged/muster roll employees, if they wished to join the new Corporation and this time another 258 work-charged employees opted and joined their duties with the Corporation w.e.f. 01.07.1990. Lastly, on considering the memorandum of demand dated 04.03.1995 (copy annexure-6 to the writ petition) of the Union 'The THDC Ltd. Sinchai Sangathan', a meeting appears to have been held in which it was agreed by the Management to absorb the

remaining work-charged/muster roll employees by 10.04.1995 giving them notional seniority w.e.f. 1st July, 1990 (a copy of the said minutes of the meeting are Annexure-7 to the writ petition). Admittedly, 281 out of the remaining worked-charged / Muster Roll employees also finally gave their options for absorption and joined the Corporation on 01.07.1994 with their notional seniority w.e.f. 01.07.1990. The respondent No. 3 to 167 who are also members of respondent No. 2 were amongst the 281 work-charged employees who joined Corporation w.e.f. 01.07.1994 as mentioned above. A copy of the appointment letter is annexed as Annexure- 9 to the writ petition. Para 2.1.7 of their appointment letter specially provides that the appointee shall be given notional seniority w.e.f. 01.07.1990 and shall not be given monetary benefits admissible to them for the period prior to 01.07.1994.

7) Learned counsel for the respondents argued that the workmen had accepted this offer under protest and drew my attention to the Annexure- 1 to the counter affidavit. He further argued that in such circumstance, the Labour Court was well within its jurisdiction to direct the petitioner to pay the difference of salary. He drew my attention to principle of law laid down in New Taj Mahal Café Vs. Labour Court, Hubli 1970 (20) FLR pg. 199. I have gone through the said judgment, the said case law pertains to the dues admissible to the employee on recalling to his suspension order. In that circumstance, the entitlement or the right of payment already existed as such the Court found that the Labour Court was well within its jurisdiction to direct the Management to pay the dues of the workman. In the present case it cannot be said that under Section 33-C (2), Labour Court has any power to determine the right as to the entitlement of the dues. Before further discussion, it is pertinent to mention here the provisions of

Section 33 C of Industrial Disputes Act, 1947 which reads as under:

"33C. Recovery of money due from an employer- (1). Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

"Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months].

[Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and the other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.- In this section "Labour Court" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

The sub Section (2) cannot be read independently of sub Section (1) of Section 33 C. In other words, under sub Section (2) of Section 33 C, Labour Court can only determine dispute as to calculation of amount admissible and not the right as to entitlement. Learned counsel for the respondents drew my

attention to the principle of law laid down in Central Bank of India Vs. Rajagopalan A.I.R. 1964 Supreme Court pg. 743 and argued that the Labour Court can decide the rights as to entitlement as well. On close scrutiny of the said referred case, I found that there already existed award of settlement as required for the purposes of Section 33 C (1) of Industrial Disputes Act, 1947 due to which it was held that the Labour Court can interpret the award or the settlement. Settlement in the Section refers to the settlement made by the conciliation authorities or award passed by the Labour Court. On behalf of the respondents, my attention was also drawn to the case of S. Srinivas Vs. Labour Court, Hyderabad 2001 (88) FLR pg. 195. On perusal of said case, I found that there is admission on the part of the employer that the petitioner of said case was a Filter Operator and no one else was working on his post. As such, rejection of the application under Section 33 C (2) as to payment of salary by Labour Court was found to be illegal. It is not the case here. Admittedly, though working with THDC the respondents No. 3 to 167 were earlier employees of the State of U.P. on a different salary than the pay scales admissible to the employees of T.H.D.C. The contesting respondents themselves refused to avail the opportunity of absorption in the year 1990 even after being offered the same twice. The employer cannot be held responsible for making the payment (disputed) of the period they refused to join as regular employee of the Corporation.

8) The most objectionable point in the impugned order / award is that the Presiding Officer of the Labour Court who dismissed the application of the similarly situated two workmen of THDC vide his order dated 31.05.2000 (copy Annexure-13 to the writ petition) passed in miscellaneous case 49 of 2000, has preferred to allow the application when moved by the other workers in the form of miscellaneous case No. 167 of 2000.

Vide order / award dated 31.05.2001, the same claim was earlier rejected by the same Presiding Officer for the reason that scope of Section 33 C (2) is a limited one and the Labour Court cannot go into the question of determining right of the party. Apart from this, in the earlier order / award dated 31.05.2001, the Presiding Officer, Labour Court (respondent No. 1) gave reasons while rejecting the application of the two similarly situated workmen of T.H.D.C. that there is no adjudication order or award or settlement or condition or service regarding which he can make direction to payment of difference of arrears in salary. He has relied in his earlier order / judgment, the principle of law laid down in Municipal Corporation, Delhi Vs. Ganesh Razaak 1995 L.L.J. pg. 395. But in miscellaneous case No. 167 / 2000 while deciding the application under Section 33 C (2) on 19.08.2001, the respondent No. 1 has taken a 'U' turn and allowed the application. In jurisprudence such an impugned order / award cannot be upheld as the same appears to be arbitrary.

9) Shri M.C. Pant, learned counsel for the respondents drew my attention to the principle of law laid down in M/s Fabril Gasosa Vs. Labour Commissioner 1997 (5) FLR pg. 715 but the same does not help the respondents, for, in the case of Fabril Gasosa, the recovery certificate was issued by the Labour Commissioner and the same was found to be in accordance of Industrial Disputes Act, 1947 while in the present case the respondents failed to show me the award / the settlement or agreement whereby the T.H.D.C. had agreed to pay the pay scales of the Corporation to the employees who were absorbed on 01.07.1994, for the period prior to it. Lastly, my attention was drawn also to the Apex Court's judgment reported in A.I.R. 1976 Supreme Court pg. 929, in the case of Central Bank Vs. S.K. Shaw, in which it has been held by the Supreme Court that the Labour Court can interpret the terms of the agreement under

Section 33 C (2) of the Industrial Disputes Act, 1947. But in the opinion of this Court, since the terms and conditions on which the respondents were absorbed with the T.H.D.C. are clear and unambiguous as such there is no scope for interpretation in the present case. Therefore, the principle of law laid down in S.K. Shaw (Supra) does not help the respondents in the circumstances.

10) In view of the above discussions, the impugned order / award, being arbitrary and not in accordance with the law, is liable to be quashed. Therefore, writ petition is allowed. Impugned order / award dated 19.08.2001 passed by respondent No. 1 is hereby quashed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 3rd November, 2004
Sweta